

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 233

In the Matter of)	
)	CUB’s Response to Idaho Power
IDAHO POWER COMPANY)	Company’s Motion for Official Notice
)	
Request for General Rate Revision)	
_____)	

1 **I. Introduction**

2 The Citizens’ Utility Board of Oregon (“CUB”), pursuant to OAR 860-001-0420(5),
3 hereby files its response to Idaho Power Company’s (“Idaho Power” or “Company”) Motion for
4 Official Notice. On November 1, 2012, Idaho Power filed with the Commission its Motion for
5 Official Notice (“Motion”), which requests that the Public Utility Commission of Oregon
6 (“Commission”) take official notice of certain portions of the record from Docket UE 246,
7 PacifiCorp’s 2012 general rate case.¹ CUB notes that the Company did not file its Motion as one
8 requiring expedited review but given the timelines in this case CUB respectfully requests that
9 such review be applied to this motion and the responses thereto. CUB requests that the
10 Commission deny Idaho Power’s Motion for the reasons discussed below.

11 **II. Idaho Power’s Motion for Official Notice Should Be Denied**

12 CUB makes its request that the Commission deny Idaho Power’s motion for the
13 following reasons:

14 ***1. No attempt was made to confer with CUB after the hearing and prior to the filing***
15 ***of this motion.***

16 Idaho Power’s counsel first raised this issue with CUB prior to the hearing. CUB advised

¹ UE 233 – Idaho Power Company’s Motion for Official Notice at 1-2.

1 that it would not object to the inclusion of *all* documents from the UE 246 rate case in this
2 docket but that it would object to the *selective* inclusion of only some documents from that rate
3 case. Idaho Power Company then waived cross examination and did not raise this issue at
4 hearing. After the hearing Counsel for PacifiCorp, Ms. Wallace, raised this issue off the record
5 with ALJ Pines and requested CUB's participation in that conversation. CUB again stated that it
6 would not object to the inclusion of *all* UE 246 documents in the UE 233 docket but that it
7 would object to the *selective* inclusion of only some documents and that it objected to the need to
8 come to PacifiCorp with each individual document to obtain authorization to use it as required
9 by the UE 246 protective order – discussed further below. ALJ Pines requested the parties
10 continue their discussions privately and try to resolve the issue outside of her presence. CUB has
11 not heard from either PacifiCorp or Idaho Power Company since the time of the hearing and,
12 therefore, assumed that the matter had been dropped. CUB has been preparing its briefs based
13 on the record at hand in each docket. CUB believes that the filing of this motion at this time is
14 pure gamesmanship – an attempt to distract CUB from its brief writing in both cases which is
15 unfortunately succeeding.

16 **2. *Timeliness***

17 Idaho Power and PacifiCorp have clearly had this issue on their radar for many weeks but
18 waited until November 1, 2012 – six days prior to the deadline for filing briefs - to formally raise
19 this issue with the Commission. This action is extremely prejudicial to CUB. CUB respectfully
20 requests that for the reason of timeliness alone that this request should be denied.

21

22

1 **3. The UE 246 Protective Order**

2 CUB is prohibited by the UE 246 protective order - Order 12-060 Section 12 - from using
3 materials in any other docket without the written permission of the Company. For this reason,
4 and in an attempt to obtain clarification of PacifiCorp's position on this matter, CUB emailed
5 PacifiCorp's counsel at 4:26 p.m. yesterday, November 1, 2012. The email (Attachment 1)
6 requested the following:

7 Sarah:

8
9 As you know CUB objects to the selective use of UE 246 materials in the UE 233
10 docket. We discussed this before the hearing and after the hearing in the presence
11 of Judge Pines.

12
13 Pursuant to the Protective Order in UE 246 CUB is prohibited from using UE 246
14 materials in any other docket without the express written permission of
15 PacifiCorp – Order 12-060 Section 12.

- 16
17 1. Is CUB to understand, from IPCO's Motion for Official Notice, that
18 PacifiCorp is now waiving the Order No. 12-060 confidentiality
19 protections?
20
21 2. That, as a signatory to the UE 246 protective order, CUB now has
22 PacifiCorp's permission to use any and all non confidential and
23 confidential materials from the UE 246 docket in the UE 233 docket in
24 order to respond to IPCO's arguments related to Bridger 3 in the UE 233
25 docket?
26
27 3. And that PacifiCorp is granting this permission subject to the UE 246
28 materials being kept confidential pursuant to the UE 233 protective order?
29
30 4. And that CUB would not fall foul of any of the provisions of the UE 246
31 protective order – Order 12-060 - if it submitted confidential testimony
32 and exhibits from the UE 246 docket into the UE 233 docket?
33

34 Please advise immediately as to PacifiCorp's position on CUB's ability to use and
35 disclose any and all confidential material from docket UE 246 in docket UE 233
36 in order to respond to IPCO's arguments in the UE 233 docket.

37
38 Thanks.

1
2
3
4
5

6
7
8
9
10
11
12

13
14
15
16
17
18
19
20
21
22
23
24

Regards,

Catriona

As of the time of filing of this response to Idaho Power’s Motion, CUB has received no response from PacifiCorp clarifying its position in this matter. Without the assurance that CUB and the other intervenors have the right to freely utilize confidential as well as non-confidential information from the UE 246 record in their briefs in order to respond to the information they anticipate will be presented by Idaho Power there is no level playing-field in this matter. The briefs to be filed on November 7, 2012 are simultaneous briefs. All parties must have equal access to appropriate materials at that time as discussed in the next section.

4. All parties should have equal access to all documents relevant to this proceeding.

Idaho Power requests that the Commission take official notice of the Direct, Reply and Surrebuttal Testimony of PacifiCorp witness Chad A. Teply, the Reply and Surrebuttal Testimony of Cathy S. Woollums, as well as the transcript of the UE 246 hearing held on October 15, 2012 and the cross-examination exhibits admitted into the record at the hearing.² Quite noticeably, the Company has not asked for the Commission to take official notice of the response and rebuttal testimony of other parties related to incremental emission control investments that were installed at Jim Bridger Unit 3. It would be entirely inappropriate and prejudicial to take official notice of only PacifiCorp’s testimony relevant to the issues in UE 233 without also taking notice of and considering all of the opposing testimony and analysis of other parties in response to PacifiCorp’s written and oral testimony. It would also be prejudicial to CUB’s case to require CUB to now, with five days to go to briefing, negotiate with PacifiCorp

² UE 233 – Idaho Power Company’s Motion for Official Notice at 1-2.

1 over what evidence CUB will be permitted to use in UE 233. In short, all information from UE
2 246 should come in, or it should all stay out. Due to the timing of this Motion and the deadline
3 for filing closing briefs in this docket CUB respectfully requests that the Commission deny Idaho
4 Power's Motion and decline to take official notice of any portion of the record in UE 246. To
5 allow the Company to now throw in testimony from another case and to allow it to rely upon the
6 testimony of non-Company witnesses in this docket, ***who were not subject to cross-examination***
7 ***in UE 233 about UE 233 issues***, and without the corresponding UE 246 response and rebuttal
8 testimony from other parties, would create an utterly unfair playing-field and is highly
9 prejudicial to CUB and the other intervenors.

10 ***5. Granting Idaho Power's Request Will Greatly Expand the Scope of this Docket.***

11 Idaho Power has filed its request for the taking of Official Notice of materials from the
12 UE 246 docket with only six days to go before closing briefs are to be filed in this UE 233
13 docket. The result of Idaho Power's Motion, if granted, is that the evidentiary basis for UE 233
14 will be immensely expanded a mere five days before closing briefs are due to be filed, and would
15 lead to the inclusion of information that is wholly irrelevant to the narrow issue in this case—
16 whether *Idaho Power's* investment in the incremental pollution controls at Jim Bridger Unit 3
17 were prudent. Much of what Idaho Power is requesting be included in the UE 233 docket has
18 nothing to do with the pollution controls at Bridger and relates to the myriad of arguments that
19 PacifiCorp has come up with to protect its investments in other plants. This docket is about
20 Idaho Power and whether Idaho Power was prudent in making these investments. What
21 PacifiCorp did or did not do is not relevant to this case, and even if it were and CUB continues to
22 dispute this, only what PacifiCorp did or did not do in regard to Bridger 3 would be relevant to

1 this case. Really the issue here is whether Idaho Power was prudent in allowing PacifiCorp to
2 make all its decisions for it. To include the entire testimony of Chad Teply and Cathy
3 Woollums, the entire transcript from a hearing in which Idaho Power did not participate and
4 which barely touched on Bridger 3 would take this docket far beyond its original scope. The
5 bottom line is that this prudence analysis is about what Idaho Power knew or should have known
6 in relation to Bridger 3, and application of the objective reasonableness standard should not take
7 this docket outside of what was known or knowable to Idaho Power in relation to Bridger 3 at the
8 time that the Bridger 3 decisions were made.

9 **III. If the Commission Takes Official Notice of Portions of the Record From UE 246,**
10 **the Date for Filing Closing Briefs in Docket UE 233 Should Be Extended**
11

12 Should the Commission decide to take official notice of portions of the record from
13 Docket UE 246, CUB respectfully requests that the Commission grant an extension of time for
14 closing briefs in this UE 233 docket so that all parties will have time to fully address in closing
15 briefs the information that would then be a part of the UE 233 proceeding. As things stand, CUB
16 has already formed its theory of each case based on the facts in the current record of each case
17 and is busily drafting its Post Hearing briefs. It would be detrimental to CUB's case to change
18 course at this late time—especially in light of the fact that the Post Hearing brief for UE 246 is
19 also due on November 7, 2012 and like the Idaho Power Post Hearing Brief is still a work in
20 progress. There is no statutory deadline for the UE 233 docket - rates including the Jim Bridger
21 investments went into effect on March 1, 2012, subject to deferral of the variance of the pollution
22 control investment dollars.³ Therefore, the Commission's granting of an extension for closing
23 briefs in this UE 233 docket would not run afoul of statutory constraints and would allow the

³ See ORS 757.215; *Re Idaho Power Company*, Docket UE 233, Order No. 12-055 at 5-6 (Feb. 23, 2012);
Docket No. UE 233 - Order No. 12-055 (Feb. 27, 2012).

1 parties to fully address any officially noticed information in briefs. No party would be unduly
2 prejudiced by an extension in the event that additional information from Docket UE 246 was
3 permitted in this docket - however, as stated above, CUB does not support the Commission's
4 taking of official notice of any oral or written testimony from Docket UE 246 at this late time.
5 Notwithstanding the above, CUB proposes that if the Officially Noticed Materials are to be
6 accepted into the UE 233 record that all other UE 246 documents likewise be accepted into the
7 UE 233 record and that a new deadline for the Post Hearing Briefs in Docket UE 233 then be set
8 for November 15, 2012 thus allowing all parties an equal opportunity to review and analyze the
9 additional materials, and write their briefs, with respect to the arguments in UE 233.

10 **IV. Conclusion**

11 For the reasons stated above, CUB respectfully requests that the Commission deny Idaho
12 Power's Motion for Official Notice. Should the Commission decide to grant Idaho Power's
13 Motion, which CUB does not support, CUB urges the Commission to take official notice of *all*
14 parties' testimonies, both confidential and non-confidential portions, regarding the prudence of
15 emission control investments at Jim Bridger Unit 3. Finally, because of the limited time
16 remaining in this docket before final briefs, CUB respectfully requests that the Commission
17 extend the time for filing Post-hearing briefs in this docket should the Commission take official
18 notice of additional information outside of this docket because it would have significant
19 implications for CUB's Post Hearing brief in UE 233.

20

21

22

23

DATED this 2nd day of November, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. C. McCracken', written in a cursive style.

G. Catriona McCracken, Attorney #933587
General Counsel/Regulatory Program Dir.
Citizens' Utility Board of Oregon
610 SW Broadway Ste 400
Portland, OR 97205
(503) 227-1984
Catriona@oregoncub.org

Catriona McCracken

From: Catriona McCracken
Sent: Thursday, November 01, 2012 4:26 PM
To: Sarah Wallace (Sarah.Wallace@PacifiCorp.com)
Cc: Bob Jenks; Sommer Templet
Subject: UE 246/UE 233 IPCO's request to use materials from UE 246

Follow Up Flag: Follow up
Flag Status: Flagged

Sarah:

As you know CUB objects to the selective use of UE 246 materials in the UE 233 docket. We discussed this before the hearing and after the hearing in the presence of Judge Pines.

Pursuant to the Protective Order in UE 246 CUB is prohibited from using UE 246 materials in any other docket without the express written permission of PacifiCorp – Order 12-060 Section 12.

1. Is CUB to understand, from IPCO's Motion for Official Notice, that PacifiCorp is now waiving the Order No. 12-060 confidentiality protections?
2. That, as a signatory to the UE 246 protective order, CUB now has PacifiCorp's permission to use any and all non confidential and confidential materials from the UE 246 docket in the UE 233 docket in order to respond to IPCO's arguments related to Bridger 3 in the UE 233 docket?
3. And that PacifiCorp is granting this permission subject to the UE 246 materials being kept confidential pursuant to the UE 233 protective order?
4. And that CUB would not fall foul of any of the provisions of the UE 246 protective order – Order 12-060 - if it submitted confidential testimony and exhibits from the UE 246 docket into the UE 233 docket?

Please advise immediately as to PacifiCorp's position on CUB's ability to use and disclose any and all confidential material from docket UE 246 in docket UE 233 in order to respond to IPCO's arguments in the UE 233 docket.

Thanks.

Regards,

Catriona



G. Catriona McCracken
General Counsel/CUB Regulatory Program Director

Citizens' Utility Board of Oregon
610 SW Broadway Suite 400
Portland OR 97205

E: Catriona@oregoncub.org
P: 503-227-1984 x16
F: 503-274-2956

On the web at:

<http://www.oregoncub.org>

<http://www.cubpolicycenter.org>

<http://www.cubconnects.org>

******* CONFIDENTIALITY NOTICE *******

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply email, keep the contents confidential, and immediately delete the message and any attachments from your system.

UE 233 – CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of November, 2012, I served the foregoing CUB's Response to Idaho Power Company's Motion for Official Notice in docket UE 233 upon each party listed in the UE 233 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)
(HC denotes highly confidential)

(C denotes service of Confidential material authorized)

W DON READING
C 6070 HILL ROAD
HC BOISE ID 83703
dreading@mindspring.com

W JOSHUA D JOHNSON
C 101 S. CAPITOL BLVD., STE 300
HC BOISE ID 83702
jdj@racinelaw.net

W ERIC L OLSEN
C 201 E CENTER ST
HC POCAPELLAO ID 83201
elo@racinelaw.net

W MCDOWELL RACKNER & GIBSON
C LISA F RACKNER
HC 419 SW 11TH AVE, STE 400
PORTLAND OR 97205
dockets@mcd-law.com

W IDAHO POWER COMPANY
REGULATORY DOCKETS
PO BOX 70
BOISE ID 83707-0070
dockets@idahopower.com

W DEPARTMENT OF JUSTICE
C STEPHANIE S ANDRUS
HC 1162 COURT ST NE
SALEM OR 97301-4096
stephanie.andrus@state.or.us

W IDAHO POWER COMPANY
C LISA D. NORDSTROM
HC PO BOX 70
BOISE ID 83707-0070
lnordstrom@idahopower.com

W PUBLIC UTILITY COMMISSION
C JUDY JOHNSON
HC PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

W RICHARDSON & O'LEARY
C PETER J RICHARDSON
HC PO BOX 7218
BOISE ID 83707
peter@richardsonandoleary.com

W PUBLIC UTILITY COMMISSION
C ERIK COLVILLE
HC PO BOX 2148
SALEM OR 97308-2148
erik.colville@state.or.us

W UTILITY NET.INC
C ANTHONY J YANKEL
HC 29814 LAKE RD
BAY VILLIAGE OH 44140
tony@yankel.net

W RICHARDSON & O'LEARY
C GREGORY M. ADAMS
HC PO BOX 7218
BOISE ID 83702
greg@richardsonandoleary.com

UE 233- Certificate of Service CUB's Response to Idaho Power Company's Motion for Official Notice

W PACIFIC POWER
R. BRYCE DALLEY
825 NE MULTNOMAH ST., STE 2000
PORTLAND OR 97232
bryce.dalley@pacificorp.com

W PACIFIC POWER
SARAH WALLACE
825 NE MULTNOMAH ST STE 1800
PORTLAND OR 97232
sarah.wallace@pacificorp.com

W DAVISON VAN CLEVE
IRION A SANGER
333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

**W REGULATORY &
COGENERATION SERVICES**
DONALD W SCHOENBECK
900 WASHINGTON ST STE 780
VANCOUVER WA 98660-3455
dws@r-c-s-inc.com

W NW ENERGY COALITION
WENDY GERLITZ
1205 SE FLAVEL
PORTLAND OR 97202
wendy@nwenergy.org

W PORTLAND GENERAL ELECTRIC
RANDY DAHLGREN
121 SW SALMON ST - 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

W PORTLAND GENERAL ELECTRIC
DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

W PACIFIC POWER
OREGON DOCKETS
825 NE MULTNOMAH ST, STE 2000
PORTLAND OR 97232
oregondockets@pacificorp.com

W DAVISON VAN CLEVE
MELINDA J DAVISON
333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

**W RENEWABLE NORTHWEST
PROJECT**
MEGAN WALSETH DECKER
421 SW 6TH AVE #1125
PORTLAND OR 97204-1629
megan@rnp.org

Respectfully submitted,



Sommer Templet, OSB #105260
Staff Attorney
Citizens' Utility Board of Oregon
610 SW Broadway, Ste. 400
Portland, OR 97205
(503) 227-1984 phone
(503) 224-2596 fax
sommer@oregoncub.org